No. 92-1239

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

Supreme Court, U.S.
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J.E.B.,

Petitioner,

v.

T.B.,

Respondent.

On Writ of Certiorari to the Supreme Court of the State of Alabama

BRIEF OF NATIONAL WOMEN'S LAW CENTER, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN, AMERICAN CIVIL LIBERTIES UNION, CENTER FOR WOMEN POLICY STUDIES, CLEARINGHOUSE ON WOMEN'S ISSUES, CONNECTICUT WOMEN'S EDUCATION AND LEGAL FUND, EQUAL RIGHTS ADVOCATES, LEAGUE OF WOMEN VOTERS IN THE UNITED STATES, MEXICAN AMERICAN WOMEN'S NATIONAL ASSOCIATION, NATIONAL ASSOCIATION OF BLACK WOMEN ATTORNEYS, NATIONAL HOOK-UP OF BLACK WOMEN, INC., NORTHWEST WOMEN'S LAW CENTER, NOW LEGAL DEFENSE AND EDUCATION FUND, PEOPLE FOR THE AMERICAN WAY, WOMEN EMPLOYED, WOMEN'S LAW PROJECT, AND WOMEN'S LEGAL DEFENSE FUND, AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution prohibits the exercise of peremptory challenges based upon the gender of the juror?

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INTEREST OF THE *AMICI CURIAE*

Amici Curiae are 17 women's rights, civil rights and civil liberties organizations sharing a strong commitment to the protection of the rights of women and the elimination of unlawful discrimination against women.[1] They litigate and educate the public to secure equal rights for women in all aspects of American life. Individual statements of interest of the *amici* are reproduced in the Appendix.

The case before the Court is of great importance to *amici* because the use of gender-based peremptory challenges undermines the right to participate equally in the legal system without regard to gender, reinforces stereotypical views of gender roles and perpetuates historic discrimination against women. *Amici* submit this brief in support of petitioner J.E.B. on the issue of whether the exercise of gender-based peremptory challenges violates the Equal Protection Clause of the Fourteenth Amendment.

STATEMENT OF THE CASE

This case involves a paternity and child support action initiated by the State of Alabama against J.E.B. in the Circuit Court of Jackson County, Alabama. The State alleged, on behalf of T.B., that J.E.B. was the father of a child born to T.B.

The matter was called for trial on October 21, 1991 and the court proceeded to empanel a jury. During *voir dire*, the State used nine of its ten peremptory challenges to strike men.[2] Prior to the empaneling of the jury, petitioner challenged the State's use of its peremptory strikes to eliminate male jurors from the panel based upon their gender.[3] Petitioner requested the trial court to hold a hearing on the State's use of peremptories pursuant to the procedures established in *Batson v. Kentucky*, 476 U.S. 79 (1986). Petition at A-2-5. The trial court overruled the objection and the case proceeded to trial with twelve female jurors. *Id.* Since the trial court denied petitioner's challenge of the State's peremptory strikes without requiring the State to provide gender-neutral reasons, there is no issue before this Court as to whether or not the State actually discriminated in its use of peremptory strikes.

The jury returned a verdict finding J.E.B. to be the father of the child, and the trial court entered judgment. Petitioner filed a post-judgment motion requesting a judgment notwithstanding the verdict or, in the alternative, a new trial. Petitioner again raised his argument that the State's gender-based peremptory challenges violate federal equal protection guarantees and urged the court to afford him the procedures under *Batson*. Petition at A-7-8. The trial court denied the motion, concluding "that the *Batson* doctrine does not extend to gender based strikes." Petition at A-14-16.

Petitioner thereafter noticed an appeal to the Alabama Court of Civil Appeals, which rejected his equal protection argument on the ground that the Alabama Su-

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[1] Petitioner and respondent have consented to the filing of this brief. Copies of the parties' consent letters have been filed with the Clerk.

[2] Alabama uses the "struck jury" method to impanel juries in civil cases. Jurors and alternates are selected by each party, commencing with the party demanding the jury, alternately striking names off a list of at least twenty-four potential jurors, until twelve remain on the list. Alternates are the last jurors struck before the requisite number of jurors is reached. *See* Ala. R. Civ. P. 47.

[3] This paternity action is a civil suit under Alabama law. Ala. Code § 26-17-9 (1992). Under Ala. Code § 26-17-7 (1992), however, the State of Alabama is given jurisdiction to initiate such actions on behalf of the mother of the child. Consequently, the State's district attorney exercised the peremptory challenges in this case. The constitutional issue posed by this case would be no different, however, had the peremptory challenges been exercised by a private civil litigant. *See Edmonson v. Leesville Concrete Co.*, 111 S. Ct. 2077, 2083-87 (1991) (holding that the exercise of peremptory strikes by private litigants in civil cases constitutes "state action").

preme Court had "declined to extend the *Batson* principle to gender-based strikes." Petition at A-26; *J.E.B. v. State*, 606 So. 2d 156, 157 (Ala. Ct. App. 1992). The Alabama Supreme Court denied certiorari on October 23, 1992. Petition at A-33. Petitioner filed a petition for writ of certiorari in this Court, which granted the petition. 61 U.S.L.W. 3771 (May 18, 1993).

SUMMARY OF ARGUMENT

Gender discrimination in jury selection has no place in the courts. Although this Court chose to grant certiorari in a case involving peremptory strikes against men, this case necessarily implicates the rights of women as well. Peremptory strikes against either gender based upon the characteristic of gender sustain stereotypical views of both genders. Such stereotypes perpetuate the historical discrimination that women have suffered in the jury system.

The exercise of gender-based peremptory challenges undermines the ability of women to fully attain the equal rights long denied them in jury service. Such discrimination also harms the interests of women as a group and as individuals, and undermines public confidence in the judicial system's ability to dispense justice.

Since gender-based peremptory challenges rely on gender stereotypes, they are not related to the objective of achieving an impartial jury or to any other legitimate government objective. Accordingly, such challenges cannot withstand the heightened scrutiny against which gender classifications must be tested under the Equal Protection Clause. *See, e.g., Craig v. Boren*, 429 U.S. 190, 199 (1976). The principles of *Batson* and its progeny are therefore fully applicable to the exercise of gender-based challenges.

ARGUMENT

I. GENDER-BASED PEREMPTORY CHALLENGES ARE BASED ON STEREOTYPES OF WOMEN AND HARM WOMEN BY PERPETUATING HISTORICAL DISCRIMINATION AGAINST THEM.

Gender discrimination flows from policies and actions based upon an individual's sex rather than the qualities or accomplishments of the individual. Victims of discrimination in the arena of government (and elsewhere) for too long, women should not be relegated to mere observers of our system of justice simply because they are women. As demonstrated below, the use of peremptory challenges based upon gender perpetuates a history of exclusion, and results in distinct and substantial injuries to women as a group, to women as individuals, to litigants, and to society as a whole.

A. Gender-Based Peremptory Challenges Perpetuate the Historical Discrimination Suffered by Women.

The use of gender-based peremptory strikes was not an issue until modern times since only men were allowed to serve on juries. The exclusion of women from juries dates back to English common law, under which women were denied the right to jury service based on the doctrine of *propter defectum sexus*—because of the defect of sex.[4] In 1880, this Court invalidated a state statute banning African-Americans from jury service, but nonetheless indicated its approval of all-male juries. *See Strauder v. West Virginia*, 100 U.S. 303, 310 (1880) (Fourteenth Amendment does not prohibit state from confining selection "to males, to freeholders, to citizens, to persons within

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[4] 3 W. Blackstone, *Commentaries on the Laws of England* 362 (1979). A jury composed of women, however, was sometimes used in cases where it was necessary to determine whether or not a woman was pregnant. *See id.*; R. Justin Miller, *The Woman Juror*, 2 Or. L. Rev. 30 (1922).

certain ages, or to persons having educational qualifications."), *overruled,* 419 U.S. 522 (1975).[5]

The historical exclusion of women from juries rested on culturally-embedded views of gender differences. It was assumed that a woman's special sphere was the home, and that jury duty would interfere with a woman's ability to fulfill her domestic role. It was also believed that women had traits that were different from men's, and that women operated under different—sometimes higher—moral codes.[6] Opponents of women's jury service also argued that the presumed "different nature" of women would adversely affect their ability to dispense justice.[7] These opponents raised the concern that women did not have the worldly experience necessary to serve on juries, especially in cases involving commercial issues. Implicit

[5] Despite *Strauder,* some states authorized the participation of women on juries near the end of the 19th century. For example, Utah permitted women to serve on juries beginning in 1898. Carol Weisbrod, *Images of the Woman Juror,* 9 Harv. Women's L.J. 59, 60 n.3 (1986) ("Weisbrod"), and Wyoming women were allowed to be seated on juries from 1870 until 1892. Susan McCoin, *Sex Discrimination in the Voir Dire Process: The Rights of Prospective Female Jurors,* 58 S. Cal. L. Rev. 1225, 1243 n.118 (1985) ("McCoin").

[6] Weisbrod, *supra* note 5, at 61-62. With regard to the assumptions made about women and the home, opponents of women's jury service, like the anti-suffragists, insisted that women's political participation would injure the family. The rationale was that the more women strayed from the home, the more they would adopt the male values of politics and business, to the neglect of the female values needed for the preservation of the home. Opponents contended that jury service would require women to be away from home for long periods, effectively requiring them to "abandon" their children. Furthermore, the opponents feared that indelicate language often heard in court trials might embarrass women and dilute their "purity." A woman's virtue might be further compromised, opponents argued, by staying overnight with male jurors during long trials. *Id.* at 64-67.

[7] Weisbrod, *supra* note 5, at 68.

in these arguments was the assumption that women's verdicts would not resemble justice dispensed by men, and that women's decisionmaking would be unfairly biased.[8]

In the great majority of states, women continued to be excluded from jury service, even after they attained universal suffrage in 1920.[9] During the Second World War, at the same time great numbers of women went to work in industrial occupations traditionally reserved for men, twenty-one- states still excluded women from juries.[10] And, although the Civil Rights Act of 1957 [11] gave women the right to sit on federal juries, three states continued to exclude women from juries through 1962.[12] The last state law barring women from juries was finally repealed in 1968.[13]

In *Hoyt v. Florida,* 368 U.S. 57 (1961), *overruled,* 419 U.S. 522 (1975), this Court found that a Florida statute according women an absolute exemption from jury service did not violate the Fourteenth Amendment. *Id.* at 65. Acknowledging the "enlightened emancipation of women from the restrictions and protections of bygone

[8] *Id.* at 75-76.

[9] Note, *Beyond Batson: Eliminating Gender-Based Peremptory Challenges,* 105 Harv. L. Rev. 1920, 1924 (1992) (*"Challenges"*).

[10] Weisbrod, *supra* note 5, at 60-61. This Court held in 1946 that federal courts could not keep women off jury panels if women were eligible for jury service under local law. *Ballard v. United States,* 329 U.S. 187 (1946). The decision rested not on constitutional grounds but on the Court's supervisory power over the federal courts. The *Ballard* decision did not have a significant impact on the states—in 1948, fifteen states still denied women the right to serve as jurors. Weisbrod, *supra* note 5, at 61 & n.6.

[11] Civil Rights Act of 1957, Pub. L. No. 85-315, 71 Stat. 634, 635-38 (1957) (codified as amended in scattered sections of Titles 28 and 42 of the United States Code).

[12] Weisbrod, *supra* note 5, at 61 & n.7 (Alabama, Mississippi, and South Carolina prohibited women jurors at that time).

[13] *See* McCoin, *supra* note 5, at 1243.

years, and their entry into many parts of community life formerly considered to be reserved to men," the Court nevertheless concluded that the statute was " 'based on some reasonable classification.' " *Id.* at 61-62. Specifically, the Court held that the state was "acting in pursuit of the general welfare" because women were "still regarded as the center of home and family life." *Id.* at 62.[14]

It was not until 1975 that this Court determined to "put to rest the suggestion that all women should be exempt from jury service based solely on their sex and the presumed role in the home."[15] In *Taylor v. Louisiana*, the Court held for the first time that the systematic exclusion of women from jury panels violates a defendant's Sixth Amendment rights.[16] The Court there observed that " '[w]hen any large and identifiable segment of the community is excluded from jury service, the effect is to remove from the jury room qualities of human nature and varieties of human experience, the range of which is unknown and perhaps unknowable.' " *Taylor*, 419 U.S. at 532 n.12 (quoting *Peters v. Kiff*, 407 U.S. 493, 502-04 (1972)). However, the promise of *Taylor* has not been realized, as gender discrimination continues to find acceptance in the courtroom through the discriminatory exercise of peremptory challenges.

In fact, modern trial manuals rely on sexual stereotyping in recommending jury selection strategies.[17] These

[14] *See also Mississippi v. Hall*, 187 So. 2d 861, 863 (Miss. 1966) ("The legislature has the right to exclude women so they may continue their service as mothers, wives, and homemakers, and also to protect them . . . from the filth, obscenity, and noxious atmosphere that so often pervades a courtroom during a jury trial."), *appeal dismissed*, 385 U.S. 98 (1966).

[15] *Taylor v. Louisiana*, 419 U.S. 522, 535 n.17 (1975).

[16] *Id.* at 538; *see also Duren v. Missouri*, 439 U.S. 357, 360 (1979).

[17] William Eich, *Gender Bias in the Courtroom: Some Participants Are More Equal Than Others*, 69 Judicature 339, 340-41 (April-May 1986); McCoin, *supra* note 5, at 1244.

manuals advise trial attorneys, for example, that women are less likely to feel sympathy for an attractive woman, less likely to feel sympathy for personal injury plaintiffs since they have endured the rigors of childbirth, and less likely to reach a prompt decision. *See, e.g.*, Fred Lane, *Goldstein Trial Technique* §§ 9.45-9.47 (1984); 3 Melvin M. Belli, *Modern Trials* §§ 51.59, 51.68 (2d ed. 1982); Valerie P. Hans & Neil Vidmar, *Judging the Jury* 73 (1986). One trial manual goes so far as to suggest that:

> Housewives in the suburbs are thought to be conservative on damages and not particularly sympathetic. Working women's tendencies can be expected to be shaped by the professions in which they are engaged. Women's liberationist women may feel antagonism toward male plaintiffs or male lawyers. Such jurors may appear strident, self-assertive, or hostile. If a female juror demands to be addressed as Ms. and not Miss, you probably should take heed.

Ward Wagner, *Art of Advocacy—Jury Selection* § 1.04(9) (1990). These recent expressions underscore that stereotypes of women jurors—still very much alive—should finally be put to rest. The extension of *Batson* protections to gender-based peremptories will go far toward erasing the imprimatur of government on these prejudices.

B. Gender-Based Peremptory Challenges Harm Women, Invade the Rights of Litigants, and Harm the Justice System.

Gender stereotyping in the jury selection process, and the discrimination that results from it, harms the excluded group, undermines the public's faith in the fairness of the justice system and harms litigants. *See Ballard v. United States*, 329 U.S. at 195 (Injury from "[t]he systematic and intentional exclusion of women" from jury panels "is not limited to the defendant—there is injury to the jury

system, to the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts."). These various injuries—discussed below—are perpetuated by a litigant's use of gender-based peremptory challenges.

Exclusion of persons based on gender from petit juries through peremptory challenges harms each member of the excluded group. For example, the exclusion of women gives life to the myth that women's contributions to civic life are unimportant, and that women should not contribute to defining morality. The exclusion of women as a group from this process sends an implicit message that women are somehow not competent to participate in this important civil function. *See Batson*, 476 U.S. at 87 ("Competence to serve as a juror ultimately depends on an assessment of individual qualifications and ability impartially to consider evidence presented at a trial."); Robert Harris, Note, *Redefining the Harm of Peremptory Challenges*, 32 Wm. & Mary L. Rev. 1027, 1060 (1991).

Moreover, when women or men as a class are regarded as a homogenous group who all think and act the same, it becomes easy to use gender as a proxy for generalizations and stereotypes and to discount the individual qualities that each person possesses. *See United States v. De Gross*, 960 F.2d 1433, 1439 (9th Cir. 1992) ("Peremptory strikes based on gender . . . harm the excluded venireperson because discriminatory strikes are not based upon an individual's qualifications."). Reliance on stereotypes of women as a group, for example, denies to the individual that she is unique and has qualities that distinguish her from others. Thus, treatment of individual women by relying on group stereotypes denies those women feelings of individual value and self worth, and deprives the jury system of the perspectives that these excluded persons would otherwise bring to the process. *Challenges*, *supra* note 9, at 1936-37.

Further, in the absence of a prohibition against striking potential jurors because they are women or men, gender can be used as a pretext for racial discrimination.[18] While such discrimination is unlawful under *Batson* and its progeny, litigants could too easily seize the opportunity to invoke gender as an excuse for unlawful, racially motivated strikes.[19]

Thus, when peremptory challenges are used against women based on gender, people of color are vulnerable to a double risk of discrimination, based both on race and on sex, perpetrating a particularly invidious form of discrimination. *Challenges*, *supra* note 9, at 1934 n.114. People (and particularly women) of color are already among the most disadvantaged in our society. This form of double discrimination merely perpetuates and reinforces their disadvantage. Sagawa, *supra* note 18, at 34-37, 43-44.

Striking persons based on gender also undermines the public's confidence in the jury selection process, and thus invades a public interest that this Court found crucial in *Edmonson*. *See also Georgia v. McCollum*, 112 S. Ct. 2348, 2353 (1992) (The "extension of *Batson* in this context is designed to remedy the harm done to the 'dignity of persons' and to the 'integrity of the courts.' "); McCoin,

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[18] Shirley S. Sagawa, *Batson v. Kentucky: Will It Keep Women on the Jury?*, 3 Berkeley Women's L.J. 14, 43-44 (1990).

[19] A recent Maryland case prohibiting gender-based strikes under that state's Equal Rights Amendment illustrates how women of color frequently are stricken. *Tyler v. State*, 623 A.2d 648 (Md. Ct. App. 1993), *rev'g*, *Eiland v. State*, 607 A.2d 42 (Md. Ct. Spec. App. 1992). The State used 16 of its 20 peremptory challenges to strike women, and the other four to strike men. *Eleven* of the sixteen women who were challenged by the State were African-American, three were white, and one was Asian. In attempting to justify the peremptory strikes against the African-American women, the State repeatedly stated that it was not striking the jurors because they were African-American, but because they were women.

supra note 5, at 1241-42. "The purpose of the jury system is to impress upon the criminal defendant and the community as a whole that a verdict of conviction or acquittal is given in accordance with the law by persons who are fair. The verdict will not be accepted or understood in these terms if the jury is chosen by unlawful means at the outset." *Powers v. Ohio*, 111 S. Ct. 1364, 1372 (1991). Indeed, public disrespect, doubt, and dissatisfaction are fostered when people are barred from jury service based on gender, just as when African-Americans or Latinos are barred. It is difficult to expect confidence in a verdict if the validity of the composition of the trier of fact is questionable. *See Batson*, 476 U.S. at 87 ("Selection procedures that purposefully exclude black persons from juries undermine public confidence in the fairness of our system of justice.").[20]

In this case, all men were stricken from the jury. But women too were the subject of harmful discrimination to the extent that the State, in exercising its challenges to strike men, relied on stereotypical views as to how women would respond to a paternity action. Women may thus be sought by the State for the jury in a paternity action, but it is just as certain that in other types of cases stereotyping may make women the subject of peremptory challenges. This Court should not condone a situation in which the ability of a woman or man to serve on a jury is tied to prejudicial notions held by trial attorneys as to

[20] Moreover, while this is not a criminal case, the same considerations apply with equal or even greater force in the criminal law setting. "The rehabilitative effect of condemnation and punishment by one's peers is destroyed . . . if the defendant believes she has been convicted unfairly." Sagawa, *supra* note 18, at 42. The ability of the criminal justice process to send a message to a defendant that his or her peers condemn the conduct in question is impaired when the defendant believes that the jury's verdict is based on a process lacking fundamental fairness. The criminal justice system is less effective if the validity of the results obtained through the process are perceived to be tainted by unlawful discrimination. *Id.*

how men or women will react to a particular type of case simply because of their gender. Doing so not only gives license to gender stereotyping, but undermines the public's confidence in the fairness of the jury system.

The trial below was infected from its outset by bias, sending a message to both litigants that prejudices can and do invade the courtroom. "[T]he exclusion from jury service of large groups of individuals not on the basis of their inability to serve as jurors, but on the basis of some immutable characteristic such as race, gender, or ethnic background, undeniably gives rise to an 'appearance of unfairness.'" *Lockhart v. McCree*, 476 U.S. 162, 175 (1986). Indeed, the participants in a trial cannot be expected to have faith in the fairness of jury decisions unless the law guarantees equal protection to the very jurors that are called upon to dispense justice.

II. THE USE OF PEREMPTORY CHALLENGES BASED UPON GENDER VIOLATES THE EQUAL PROTECTION CLAUSE.

A. The Principles Underlying *Batson* Apply with Full Force to the Gender Discrimination Setting.

The equal protection analysis employed by this Court in *Batson* and in subsequent cases leaves no room for the perpetuation of discriminatory peremptory challenges based upon gender. The *Batson* Court held that a prosecutor's use of race-based peremptory challenges: (1) deprives the defendant of his or her "right to be tried by a jury whose members are selected pursuant to non-discriminatory criteria," (2) "unconstitutionally discriminat[es] against the excluded juror," and (3) "undermine[s] public confidence in the fairness of our system of justice." 476 U.S. at 85-87. While the only issue before the Court was the constitutionality of race-based discrimination, nothing in the decision suggests that the holding is limited only to discrimination against the single, cognizable group

at issue in that case. Indeed, this Court has long recognized that women are also a cognizable group deserving special protections against the discriminatory treatment in the iury selection process that they have long endured. *Ballard v. United States*, 329 U.S. at 195; *Taylor*, 419 U.S. at 537; *see also Duren v. Missouri*, 439 U.S. 357 (1979).

Batson is equally applicable to racial and gender classifications since they are analogous in three ways: (1) race and gender are immutable characteristics that are readily identifiable and cannot be changed, (2) both groups have historically suffered discriminatory treatment in the jury system because of their membership in an identifiable group, and (3) both groups have been historically underrepresented in the political process.

This Court has recognized the shared characteristics of race and gender classifications. In addition to recognizing that gender, like race, is an "immutable characteristic," *Frontiero v. Richardson*, 411 U.S. 677, 686 (1973), this Court has recognized that both African-Americans and women have historically lacked power and that both share a history of discrimination in the jury system:

> There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was rationalized by an attitude of "romantic paternalism" which, in practical effect, put women, not on a pedestal, but in a cage. . . . As a result of notions such as these, our statute books gradually became laden with gross, stereotyped distinctions between the sexes and, indeed, throughout much of the 19th century the position of women in our society was, in many respects, comparable to that of blacks under the pre-Civil War slave codes. Neither slaves nor women could hold office, serve on juries, or bring suit in their own names, and married women traditionally were denied the legal capacity to hold or convey property or to serve as legal guardians of their own children.

Id. at 684-85 (footnote omitted).[21] This Court's equal protection analysis under *Batson* applies to gender precisely because race-based and gender-based peremptories evoke a shared history of exclusion from political participation.

It thus requires no fundamental extension of constitutional analysis to apply *Batson* to discrimination against gender—and in fact it defies accepted equal protection doctrine to suggest that only discrimination against African-Americans is unlawful, while discrimination against another classification accorded a heightened level of scrutiny, gender, is not. In fact, allowing the State to exclude jurors based upon gender is tantamount to branding with the State's imprimatur the false assumption that some distinction exists between the ability of a man and a woman to serve as an impartial juror. *See United States v. De Gross*, 960 F.2d 1433, 1436-38 (9th Cir. 1992) (en banc) (holding, in the course of applying *Batson* equal protection analysis to gender-based peremptories, that "[t]he history of juries in the United States is one of pervasive, government sanctioned exclusion of women" and that "[p]ermitting gender-based peremptory challenges would simply affirm an erroneous and unconstitutional presumption that women are less qualified than men to serve as jurors"), *aff'g* 913 F.2d 1417 (9th Cir. 1990).[22]

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[21] More recently, this Court reaffirmed that "[h]istory provides numerous examples of legislative attempts to exclude women from particular areas simply because legislators believed women were less able to perform a particular function." *Mississippi Univ. for Women v. Hogan*, 458 U.S. 718, 725 n.10 (1982).

[22] Numerous commentators have concluded that gender-based peremptory strikes violate the Equal Protection Clause. *See, e.g., Challenges, supra* note 9; Sagawa, *supra* note 18; Dave Harbeck, *Eliminating Unconstitutional Juries: Applying United States v. De Gross to All Heightened Scrutiny Equal Protection Groups in the Exercise of Peremptory Challenges*, 77 Minn. L. Rev. 689 (1993); S. Alexandria Jo, *Reconstruction of the Peremptory Challenge System: A Look at Gender-Based Peremptory Challenges*, 22 Pac. L.J. 1305 (1991); Jere W. Morehead, *Exploring the Fron-*

It would be anomalous, indeed, for this Court to permit gender discrimination to occur in the courtroom, while recognizing that gender discrimination is prohibited in other areas. As this Court observed in *Edmonson*:

> [T]he injury caused by the discrimination is made more severe because the government permits it to occur within the courthouse itself. Few places are a more real expression of the constitutional authority of the government than a courtroom, where the law itself unfolds.

Edmonson, 111 S. Ct. at 2087. Similarly, this Court recently reaffirmed that "the courtroom setting in which the peremptory challenge is exercised intensifies the harmful effects of the private litigant's discriminatory act." *McCollum*, 112 S. Ct. at 2356.[23]

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tiers of Batson v. Kentucky: Should the Safeguards of Equal Protection Extend to Gender?, 14 Am. J. Trial Advoc. 289 (1990).

[23] *See also Powers v. Ohio*, 111 S. Ct. at 1373 (The Fourteenth Amendment's mandate that discrimination be eliminated "from all official acts and proceedings of the State is *most compelling in the judicial system.*") (emphasis added). Gender bias is manifested in a wide range of ways in the courtroom. Many state and federal courts have developed task forces to attempt to rectify other manifestations of gender bias. *See, e.g.*, Lynn Hecht Schafran, *Gender Bias in the Courts: An Emerging Focus for Judicial Reform*, 21 Ariz. L.J. 237 (1989). The New York Task Force on Women in the Courts, for example, noted in its report:

> The Task Force has concluded that gender bias against women litigants, attorneys and court employees is a pervasive problem with grave consequences. Women are often denied equal justice, equal treatment and equal opportunity. Cultural stereotypes of women's roles in marriage and society daily distort courts' application of substantive law. Women uniquely, disproportionately and with unacceptable frequency, must endure a climate of condescension, indifference and hostility. Whether as attorneys or court employees, women are too often denied equal opportunities to realize their potential.

The New York Task Force on Women in the Courts (1986).

This Court's post-*Batson* rulings have held that the *Batson* doctrine is not limited to cases involving discrimination against African-Americans. In *Hernandez v. New York*, 111 S. Ct. 1859, 1864 (1991), this Court held that the exclusion of Latinos from a jury by the discriminatory use of peremptories by prosecutors would violate the *Batson* doctrine. And in *McCollum*, 112 S. Ct. at 2348, the Court stated, in the course of holding that criminal defendants may not use peremptory challenges in a racially discriminatory manner, that " 'constitutional considerations militate against the divisive assumption—as a *per se* rule—that justice in a court of law may turn upon the pigmentation of skin, *the accident of birth*, or the choice of religion.' " *Id.* (quoting *Ristaino v. Ross*, 424 U.S. 589, 596 n.8 (1976)) (emphasis supplied).[24] Gender, of course, is an immutable characteristic that flows from birth—and thus is clearly embraced within the Court's definition of those factors that should play no role in the dispensation of justice.

B. Peremptory Challenges Based Upon Gender Cannot Survive This Court's Heightened Scrutiny Because They Are Not Substantially Related to an Important Governmental Objective.

It is now well-settled that, under the Equal Protection Clause of the Fourteenth Amendment, classifications based on gender trigger a level of scrutiny that requires that the State show more than merely a "rational basis" for its actions—so called "heightened" scrutiny. *See, e.g., Mississippi Univ. for Women*, 458 U.S. at 724 (parties "seeking to uphold a statute that classifies individuals on

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[24] Several other post-*Batson* decisions demonstrate the appropriateness of expanding *Batson* beyond the circumstances of that case. *See Powers v. Ohio*, 111 S. Ct. at 1368 (criminal defendant of one race may challenge exclusion of jurors of a different race); *Edmonson v. Leesville Concrete Co.*, 111 S. Ct. at 2089 (applying *Batson* to hold unlawful race discrimination in selection of civil petit jury).

the basis of their gender must carry the burden of showing an 'exceedingly persuasive justification' for the classification"). In *Mississippi University for Women*, a case involving an equal protection challenge to a state-supported university which excluded men from its nursing program, this Court stated that "the test for determining the validity of a gender-based classification . . . must be applied free of fixed notions concerning the roles and abilities of males and females. Care must be taken in ascertaining whether the statutory objective itself reflects archaic and stereotypic notions." *Id.* at 725-26.

Heightened scrutiny for gender discrimination is warranted by the "long and unfortunate history of sex discrimination" in the United States, *Frontiero v. Richardson*, 411 U.S. at 684-85, as well exemplified by the exclusion of women from jury panels. As this Court recognized in *Frontiero*,

> since sex, like race and national origin, is an immutable characteristic determined solely by the accident of birth, the imposition of special disabilities upon members of a particular sex because of their sex would seem to violate 'the basic concept of our system that legal burdens should bear some relationship to individual responsibility . . .'

Id. at 686 (quoting *Weber v. Aetna Casualty & Surety Co.*, 406 U.S. 164, 175 (1972)). To satisfy the heavy burden of the heightened scrutiny standard, the State must demonstrate here that discrimination based upon gender serves "important governmental objectives" and is "substantially related to the achievement of those objectives." *Craig v. Boren*, 429 U.S. at 197; *see also Mississippi Univ. for Women*, 458 U.S. at 724.

The State cannot in this case show the "exceedingly persuasive justification" required to meet the scrutiny required by the Equal Protection Clause. *Amici curiae* do

not challenge the common law (but not constitutionally guaranteed) right of the State or other litigants to exercise peremptory challenges in a manner reasonably designed to achieve the goal of an impartial jury.[25] However, the State's and other litigants' legitimate right to exercise peremptory challenges on the basis of a hunch, a suspicion, or some sense about the predilections of an individual panel member is not a free license to strike individuals that belong to a class of persons that this Court has previously determined is a protected class under the Equal Protection Clause. Challenges against women or men as a class are necessarily based on gender stereotypes, no less than challenges against African-Americans as a class are based on stereotypes about people of color. Allowing these stereotypes a role in the jury selection process infects that process with prejudice, stigmatizes the victims of such discrimination, undermines the credibility of the judicial process, and furthers no important state interest.[26] Gender-based strikes thus lack a "direct, substantial relationship" to the State's interest in an impartial jury since they perpetuate the "application of

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[25] *Swain v. Alabama*, 380 U.S. 202, 211-12 (1965), *overruled*, 476 U.S. 101 (1985).

[26] Since gender classifications in the exercise of peremptory challenges are "not substantially related to an important [governmental] objective," this Court "need not decide whether classifications based on gender are inherently suspect." *Mississippi Univ. for Women*, 458 U.S. at 724 n.9. Nonetheless, should the Court conclude that the use of gender-based peremptories does satisfy some important government objective and that such peremptories are substantially related to the achievement of that objective, *amici* urge the Court to hold that the use of gender to classify persons in connection with their ability to sit on juries warrants examination under a strict scrutiny test, requiring the State to show that its actions are narrowly tailored to serve a "compelling state interest." *See, e.g., Bernal v. Fainter*, 467 U.S. 216, 219 (1984). The use of peremptory challenges to exclude persons from juries based on their immutable characteristics serves no such interest, as this Court recognized in *Batson*.

traditional, often inaccurate, assumptions about the proper roles of men and women." *Mississippi Univ. for Women*, 458 U.S. at 725-26.[27]

The State argued to this Court in its brief in opposition to certiorari that gender-based peremptory strikes should be permitted because men are not a "cognizable group" entitled to protection under *Batson*. Opp. Cert. at 6, 14-15. The State clearly views the issue in this case too narrowly and misunderstands this Court's jurisprudence. That this case involves peremptory strikes "against males rather than against females does not exempt it from scrutiny or reduce the standard of review." *Mississippi Univ. for Women*, 458 U.S. at 723; *see also Caban v. Mohammed*, 441 U.S. 380, 394 (1979); *Orr v. Orr*, 440 U.S. 268, 279 (1979). Gender-based strikes against men as well as against women have been found to violate the Constitution.[28] Thus, not only does this case involve the perpetuation of stereotypes of women when litigants

[27] As this Court recently held in *McCollum*, 112 S. Ct. 2348, peremptory challenges based on stereotypes do not serve *any* legitimate purpose.

[28] *See, e.g., United States v. De Gross*, 960 F.2d 1433, 1442-43 (9th Cir. 1992) (holding that defendant's challenges of males and prosecution's challenges of females both established a *prima facie* case of gender discrimination); *City of Mandan v. Fern*, 1993 WL 208469 (N.D. June 16, 1993) (strikes against men); *People v. Irizarry*, 560 N.Y.S.2d 279 (N.Y. App. Div. 1990) (same). Moreover, there has been no claim that this case falls within that category of cases where the State's action is constitutionally permissible because it intentionally and directly compensates women for prior deprivations. *See, e.g., Califano v. Webster*, 430 U.S. 313, 318-21 (1977) (statutory classification which allowed women to eliminate more low-earning years than men in computation of social security benefits upheld because of workplace inequities); *Schlesinger v. Ballard*, 419 U.S. 498, 510-11 (1975) (federal statute providing more time to female Naval officers than to male Naval officers for promotion before mandatory discharge permissible based on limitations on females' service opportunities).

strike males,[29] but it necessarily involves the constitutionality of striking women because they are women.

C. Arguments Made Against the Extension of *Batson* to Gender-Based Peremptory Challenges Neither Satisfy the State's Burden Under the Equal Protection Clause Nor Demonstrate that *Batson*'s Protections Are Unnecessary.

The State may argue that the extension of *Batson* protections to gender discrimination will lead to the demise of the peremptory challenge and thereby undermine an important state interest in impartial juries. *Amici* do not agree. The Equal Protection Clause does not forbid state actors from drawing lawful classifications, and thus does not intrude on the legitimate exercise of the peremptory challenge based on characteristics of prospective jurors other than those classifications which this Court has determined merit heightened scrutiny. Thus, while it may be permissible to rely upon certain characteristics to make predictions about the behavior of a prospective juror, there are constitutional limits to the use of certain classifications as a proxy for individual judgment.

Further, there is no basis in *Batson* for concluding that the decision turned upon, and must therefore be limited to, the strict scrutiny afforded race classifications. Nowhere in that decision did this Court suggest that gender stereotypes are more acceptable than race stereotypes.

This Court's jurisprudence, which affords gender heightened scrutiny, offers limits on the *Batson* doctrine. Heightened scrutiny is not based simply on an arbitrary line between acceptable and unacceptable classifications, but

[29] *See, e.g., Challenges, supra* note 9, at 1938 ("[S]tereotypes of male and female characteristics tend to be binary and hence mutually reinforcing. Thus, women are implicated when a state actor stereotypes a prospective male juror as 'hardboiled,' and male jurors are affected in a similar way when female jurors are presumed to be 'emotional.'").

on this Court's assessment that certain characteristics warrant special protection under the Equal Protection Clause. Since both race-based and gender-based peremptories evoke a shared history of exclusion from political participation, *Batson*'s analysis equally applies to gender.

The State may also argue that allowing gender-based strikes is justified by administrative difficulties for courts that might result from an extension of *Batson*.[30] This Court has repeatedly "rejected administrative ease and convenience as sufficiently important objectives to justify gender-based classifications." *Craig v. Boren*, 429 U.S. at 198; *see also Frontiero v. Richardson*, 411 U.S. at 690.[31] In addition, the Ninth Circuit and numerous state court systems are already functioning in a setting where gender-based discrimination in the exercise of peremptory challenges has been found unconstitutional.[32]

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[30] This is precisely the argument that opponents of *Batson* raised in that case. This Court soundly rejected this argument. *Batson*, 476 U.S. at 99.

[31] Moreover, as with race stereotypes, if gender stereotypes "are the price of acceptance of a jury panel as fair, the price is too high to meet the standard of the Constitution." *Edmonson*, 111 S. Ct. at 2088; *McCollum*, 112 S. Ct. at 2358. One state supreme court framed the issue quite well in prohibiting gender-based peremptory strikes:

> We recognize the practical difficulties this will impose upon the trial courts. It would be a more happy situation if the courts could, as they have in the past, rely on the good faith of the prosecutors and defense counsel to exercise their peremptory challenges to achieve an impartial jury in a constitutionally permissible manner. Unfortunately, as *Batson, supra*, and the facts in this case demonstrate, that good faith is not always present. The fact that the matter is difficult does not do away with the compelling necessity that criminal jury trials be fair and impartial in appearance, and in fact, nor do away with the fact that the civil rights of everyone, the defendant, the jurors, and the citizenry in general, must be protected by the courts.

State v. Levinson, 795 P.2d 845, 850 (Haw. 1990).

[32] *See, e.g., De Gross*, 960 F.2d 1433; *Di Donato v. Santini*, 283 Cal. Rptr. 751 (Cal. Ct. App. 1991) (state constitutional grounds), *review denied*, 1991 Cal. LEXIS 4582 (Cal. Oct. 2, 1991); *State v. Levinson*, 795 P.2d 845 (Haw. 1990) (state constitutional grounds); *Tyler v. State*, 623 A.2d 648 (Md. Ct. App. 1993) (state consitutional grounds); *State v. Gonzales*, 808 P.2d 40 (N.M. Ct. App. 1991) (state constitutional grounds), *cert. denied*, 806 P.2d 65 (N.M. 1991); *City of Mandan v. Fern*, No. 920274, 1993 WL 208469 (N.D. June 16, 1993) (federal constitutional grounds); *Commonwealth v. Reid*, 424 N.E.2d 495 (Mass. 1981) (state constitutional grounds); *People v. Irizarry*, 560 N.Y.S.2d 279 (N.Y. App. Div. 1990) (federal constitutional grounds); *State v. Burch*, 830 P.2d 357 (Wash. Ct. App. 1992) (state and federal constitutional grounds).

The procedures set forth in *Batson* for testing the constitutionality of particular challenges—which have proven workable—require no modification when applied to the gender setting. A finding of a *prima facie* case of purposeful gender discrimination would be based on "all relevant circumstances" and, if a *prima facie* case is made, the burden would shift to the party exercising the strikes to "articulate a neutral explanation related to the particular case to be tried." 476 U.S. at 96-98.

The Fifth Circuit's recent opinion also provides no valid justification for limiting *Batson* to race-based peremptory challenges. *See United States v. Broussard*, 987 F.2d 215 (5th Cir. 1993) (declining to extend *Batson* to gender). The opinion disregards this Court's jurisprudence and the historical discrimination against women in the jury system. The Fifth Circuit draws the remarkable conclusion that *Batson* should not be extended to gender because " 'women are qualified as jurors in all the states,' " and because Congress in the Civil Rights Act of 1957 "assured that women could not be excluded from federal jury service." *Id.* at 220 (quoting *Taylor*, 419 U.S. at 533). The fact that women or men are not legally prohibited from jury service is irrelevant to a *Batson* analysis—and means nothing to a woman or man who has been stricken from a jury on the basis of gender. When *Batson* was decided, African-Americans also could serve on juries, but this Court recognized that *Batson* was neces-

sary to ensure an equal opportunity to participate. Indeed, this Court recognized that the Constitution requires "that we look beyond the face of the statute defining juror qualifications and also consider challenged selection practices to afford 'protection against action of the State through its administrative officers in effecting the prohibited discrimination.'" *Batson*, 476 U.S. at 88 (citations omitted). Similarly, the Court recognized that "the State may not draw up its jury lists pursuant to neutral procedures but then resort to discrimination at 'other stages in the selection process.'" *Id.; see also Powers*, 111 S. Ct. at 1369.

Further, it is no answer to claim, as the *Broussard* court did, that women are adequately protected under the principles of *Swain v. Alabama*. *See Broussard*, 987 F.2d at 219-20. In *Batson*, this Court specifically overruled *Swain*, which had held that the Equal Protection Clause requires a showing that prosecutors systematically excluded African-American jurors in "case after case." *Batson*, 476 U.S. at 91-93. *Swain* was rejected because it placed upon defendants a "crippling burden of proof" and made peremptory challenges "largely immune from constitutional scrutiny." *Id.* at 92-93.[33] Indeed, this Court concluded that for "evidentiary requirements to dictate that 'several must suffer discrimination' before one could object would be inconsistent with the promise of equal protection to all." *Batson*, 476 U.S. at 96 (citation omitted). Resurrection of *Swain* as a response to gender discrimination should be rejected for these same reasons.[34]

Finally, there is no basis for the conclusion that *Batson*'s protections need not be extended to gender because, unlike African-Americans, "[w]omen are not a numerical minority," and therefore are likely to be represented on a jury despite the discriminatory use of peremptory challenges. *Broussard*, 987 F.2d at 220. First, the present case demonstrates that it is quite possible to strike all members of one gender from a jury.[35] More importantly, the argument completely misses the point of *Batson* and its progeny, that exclusion of even *one* juror *for impermissible reasons* harms that juror and undermines public confidence in the fairness of the system. "An individual juror does not have a right to sit on any particular petit jury, but *he or she does possess the right not to be excluded from one on account of race*." *Powers*, 111 S. Ct. at 1370 (emphasis added).[36] No less than in the race

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[33] During the nearly twenty years between *Swain* and *Batson*, only two defendants ever demonstrated a *prima facie* case under *Swain*. *See* Marvin B. Steinberg, *The Case for Eliminating Peremptory Challenges*, 27 Crim. L. Bull., May-June 1991, at 216, 221 (citations omitted). Even in *Swain*, the Court concluded that petitioner had not satisfied his burden even though there was testimony that no black had ever served on a petit jury in the relevant county. *Swain*, 380 U.S. at 231-32 (Goldberg, J., joined by Warren, C.J., and Douglas, J., dissenting).

[34] While this Court invalidated under the Equal Protection Clause a state statute that banned African-Americans from serving on juries in 1880, *Strauder v. West Virginia*, 100 U.S. 303 (1880), it was nearly a century later before this Court prohibited the systematic exclusion of women from juries. *See Taylor v. Louisiana*, 419 U.S. 522 (1975). The adoption of *Swain* for gender—and thus its "crippling burden of proof," *Batson*, 476 U.S. at 92—would send the unfortunate message that women might have to wait another century to move from *Swain* to *Batson*.

[35] Of course, the ultimate composition of a particular jury has no bearing on the threshold issue of whether *Batson* should apply to gender, nor can it be dispositive of a litigant's *prima facie* case. There is no justification for allowing *Batson* to turn upon whether a litigant can successfully strike all the members of the particular group. If it did, a litigant could avoid *Batson* entirely by simply seating one African-American or one woman.

[36] *See also Batson*, 476 U.S. at 99 n.22 ("The standard we adopt under the Federal Constitution is designed to ensure that a State does not use peremptory challenges to strike *any* black juror because of his race.") (emphasis added). Lower courts have repeatedly agreed that "under *Batson*, the striking of a single black

context, stereotyping jurors or excluding even one juror on account of his or her gender harms that juror, and such an "overt wrong" subverts the integrity of the legal process.[37] As this Court recently recognized, "if a court allows jurors to be excluded because of group bias, it is a willing participant in a scheme that could only undermine the very foundation of our system of justice—our citizens' confidence in it." *McCollum*, 112 S. Ct. at 2354.

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juror for a racial reason violates the Equal Protection Clause, even where other blacks are seated . . . ." *United States v. Gordon*, 817 F.2d 1538, 1541 (11th Cir. 1987), *vacated in part on other grounds*, 836 F.2d 1312 (11th Cir.), *cert. dismissed*, 487 U.S. 1265 (1988); *cf. United States v. Johnson*, 873 F.2d 1137, 1139 (8th Cir. 1989). *See also United States v. Clemons*, 843 F.2d 741, 748 (3d Cir.) ("Nor can we conclude that the inclusion of blacks on a jury bars a prima facie case, especially where other facts and circumstances may constitute an inference of prosecutorial discrimination in the selection process."), *cert. denied*, 488 U.S. 835 (1988); *People v. Jenkins*, 75 N.Y.2d 550, 558, 554 N.E.2d 47, 51 (1990) ("Thus the fact that *all* black jurors were not removed by the prosecution's discriminatory use of peremptory challenges does not render the use against some any less a violation of *Batson*.").

[37] State courts have recognized that gender-based peremptory strikes may be impermissible even where a gender-mixed jury is ultimately seated. *See, e.g., City of Mandan v. Fern*, No. 920274, 1993 WL 208469 (N.D. June 16, 1993) (two men on jury after strikes against men); *Tyler v. State*, 623 A.2d 648 (Md. Ct. App. 1993), *rev'g, Eiland v. State*, 607 A.2d 42 (Md. Ct. Spec. App. 1992) (eight women on jury after strikes against women); *State v. Burch*, 830 P.2d 357 (Wash. Ct. App. 1992) (two women on jury after strikes against women), *review denied*, 1991 Cal. LEXIS 4582 (Cal. Oct. 2, 1991); *Di Donato v. Santini*, 283 Cal. Rptr. 751 (Cal. Ct. App. 1991) (four women on jury after strikes against women); *State v. Levinson*, 795 P.2d 845 (Haw. 1990) (one woman on jury after strikes against women); *State v. Gonzales*, 808 P.2d 40 (N.M. Ct. App. 1991) (one man on jury after strikes against men), *cert. denied*, 806 P.2d 65 (N.M. 1991); *People v. Blunt*, 561 N.Y.S.2d 90 (N.Y. App. Div. 1990) (four women on jury after strikes against women); *People v. Irizarry*, 560 N.Y.S.2d 279 (N.Y. App. Div. 1990) (one man on jury after strikes against men).

CONCLUSION

For the foregoing reasons, this Court should hold that gender-based peremptory challenges violate the Equal Protection Clause and issue the relief appropriate in this case.

Respectfully submitted,

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July 15, 1993

APPENDIX

APPENDIX

INDIVIDUAL STATEMENTS OF INTEREST OF *AMICI CURIAE*

National Women's Law Center

The National Women's Law Center ("Center") is a non-profit legal advocacy organization dedicated to the advancement and protection of women's rights and the corresponding elimination of sex discrimination from all facets of American life. Since 1972, the Center has actively participated in litigation to secure the rights of women and has participated in major Supreme Court cases addressing women's right to equal protection under the law. The Center strongly believes that gender-based classifications which incorporate gender-based stereotypes have no place in a judicial system premised on fundamental principles of fairness and equality.

American Association of University Women

As a national organization of 130,000 women and men, the American Association of University Women ("AAUW") is strongly committed to promoting and achieving legal, social, educational and economic equity for women. AAUW supports basic constitutional and civil rights for all persons, and opposes all forms of discrimination.

American Civil Liberties Union

The American Civil Liberties Union ("ACLU") is a nationwide, non-profit, non-partisan organization with nearly 300,000 members dedicated to the principles of liberty and equality embodied in the Constitution. The ACLU has appeared before this Court in numerous jury discrimination cases including *Batson v. Kentucky*. Through its Women's Rights Project, the ACLU has been in the forefront of the battle against gender discrimination.

Center for Women Policy Studies

The Center for Women Policy Studies was founded in 1972 as the first national policy research and advocacy institute focused exclusively on issues of social and economic justice for women. The Center conducts research and advocacy programs on sexual harassment and violence against women, work/family and "diversity" policies of employers, education, and other relevant issues.

Clearinghouse on Women's Issues

The Clearinghouse on Women's Issues ("CWI") was established in the early 1970's by a diverse group of women's organizations to provide a channel for dissemination of information on a variety of issues of mutual concern to all women. CWI is pleased to join this *amicus* brief. The position is consistent with our goals and concerns regarding discrimination based on gender and race.

Connecticut Women's Education and Legal Fund

The Connecticut Women's Education and Legal Fund is a non-profit women's rights organization. Our mission is to work through community education, training, public policy and legal strategies to eliminate sex discrimination and empower all women to be full and equal participants in society. We were incorporated in 1973, and have over 700 members. We seek to join this case as *amicus curiae* because we believe that sex-based peremptory strikes during jury selection perpetuate stereotypes and discrimination and deny equal protection to potential jurors as well as to litigants.

Equal Rights Advocates

Equal Rights Advocates ("ERA") is one of the country's oldest women's law centers dedicated to the empowerment of women through the establishment of their economic, social, and political equality. Beginning in 1974

as a teaching law firm specializing in issues of sex-based discrimination, ERA has evolved into a legal organization with a multifaceted approach to addressing women's issues including litigation, advice and counseling, public education and public policy initiatives.

League of Women Voters of the United States

The League of Women Voters of the United States ("LWVUS") is a nonpartisan, nonprofit, membership organization with members in all 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The League of Women Voters of the United States supports equal rights for all regardless of sex. The League supports actions to bring laws into compliance with the Equal Rights Amendment. This includes the elimination of those laws that have the effect of discriminating on the basis of sex.

Mexican American Women's National Association ("MANA")

MANA's interest in this case has to do with our desire to eliminate any barriers against women of color in our system of justice. Sex-based challenges would particularly harm women of color whom we represent, thus the importance of a case like *J.E.B. v. T.B.* Sex-based challenges are as much a barrier to service on juries as are race-based challenges and it is our belief that they, too, should be ruled unconstitutional.

National Association of Black Women Attorneys

The National Association of Black Women Attorneys, Inc. ("NABWA") was formed in November, 1972. The goals set forth for the Association are: (1) to advance the practice of law; (2) to improve the administration of justice by increasing opportunities for black women to participate at all levels therein; (3) to increase the number of black women practicing law by developing programs for recruiting students and providing scholarships; and (4)

to advance the causes of civil and human rights for all citizens of the United States and its territories.

For twenty years the NABWA membership has aided in the preparation and development of black women for law schools. NABWA has a job bank, which is open to all. NABWA also endorses deserving and qualified applicants who seek judicial, political, administrative and other positions.

The Association's involvement covers the entire spectrum of legal activities, ranging from Government, industry, politics and private practice.

National Hook-Up of Black Women, Inc.

Founded in 1975, the National Hook-Up of Black Women ("NHBW") is an organization of black women from business, professional, and community-oriented disciplines representing all economic, educational, and social levels. The purpose of NHBW is to provide a communications network in support of black women who serve in organizational leadership positions, especially those elected or appointed to office and those wishing to elevate their status through educational and career ventures. NHBW also (1) works to form and implement a Black Women's Agenda that would provide representation for women, families, and communities and that would help surmount economic, educational, and social barriers; (2) supports efforts of the Congressional Black Caucus in utilizing the legislative process to work toward total equality of opportunity in society; (3) seeks to highlight the achievements and contributions of black women; (4) sponsors workshops; and (5) bestows community and leadership awards.

Northwest Women's Law Center

The Northwest Women's Law Center is a non-profit public interest legal organization in Seattle, Washington, that works to advance the legal rights of women

through litigation, education and legislative advocacy. The Law Center has been serving women throughout Washington state since 1978 and has recently expanded its litigation program to serve women in Alaska, Idaho, Oregon and Montana. One of the Law Center's priorities is the elimination of gender discrimination in all arenas—including the judicial system. To this end, we have taken the lead in the Northwest in eliminating gender bias in the courts and submitted an *amicus curiae* brief in a Washington state case challenging the constitutionality of exclusion of jurors based on their gender.

NOW Legal Defense and Education Fund

NOW Legal Defense and Education Fund ("NOW LDEF") is a national non-profit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and secure equal rights. NOW LDEF was founded in 1970 by leaders of the National Organization for Women. A major goal of NOW LDEF is the elimination of sex-based stereotypes, such as the stereotypes and generalizations that form the basis of gender-motivated peremptory challenges.

People for the American Way

People For The American Way ("People For") is a nonpartisan, education-oriented citizens' organization established to promote and protect civil and constitutional rights. Founded in 1980 by a group of religious, civic and educational leaders devoted to our nation's heritage of tolerance, pluralism and liberty, People For now has over 300,000 members nationwide. People For has been actively involved in efforts to combat discrimination and promote the equal treatment of all persons, including participating in civil rights litigation and conducting programs and studies directed at reducing problems of bias, injustice and discrimination. People For joins this brief because it supports the protections against racial discrimination in jury selection established in *Batson v. Ken-*

tucky, and believes such protections should apply in the context of gender discrimination as well.

Women Employed

Women Employed is a national organization of working women, based in Chicago, with a membership of 2000. Since 1973, the organization has assisted thousands of working women with problems of sex discrimination. Women Employed works to empower women to improve their economic status and to remove barriers to economic equity through advocacy, direct service and public education. Women Employed strongly believes that discriminatory sex-based peremptory challenges rely on stereotypical views of women and men, and ultimately perpetuate a history of discrimination in the legal system, particularly against female jurors.

Women's Law Project

The Women's Law Project ("WLP") is a non-profit, feminist legal advocacy organization, located in Philadelphia. Founded in 1974, WLP works to abolish discrimination and injustice and to advance the legal and economic status of women and their families through litigation, public education, and individual counseling. During the past seventeen years of its existence, WLP's activities have included extensive work in the area of sex discrimination.

WLP has a strong interest in the eradication of sex-based peremptory challenges in the jury selection process. The Women's Law Project believes that the opinion in this case will set an important precedent for the legal rights of women.

Women's Legal Defense Fund

Formed in 1971, the Women's Legal Defense Fund ("WLDF") works in the courts, Congress, and the administrative branch of government to further public policy for

women and their families. WLDF has been an active participant in virtually all major sex discrimination cases before the Supreme Court, in countless cases in the lower federal courts, in congressional efforts to remedy sex discrimination, and in nationwide education efforts to inform policymakers and others about sex discrimination.